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Current Topics.

Ex Luce Lucellum.

EVERYONE KNOWS the story of Mr. LOWE'S ill-starred budget, in which he imposed a tax on matches, according to his political critics in the Commons and in the Press, merely in order to adorn his budget speech with the Latin quotation "*Ex Luce Lucellum*." Some unkind critics, have suggested that Mr. CHURCHILL restored the gold standard from a similar desire to add dramatic point to the political oration in which he introduced his financial proposals for the year; but doubtless this is the unkind sneer of the cynic. The same observation probably applies to those conveyancers who always keep reminding us that Lord BIRKENHEAD vowed in the days of his youth to repeal the Statutes of Uses, which he found hard to grasp, and that the Law of Property Act, 1922, was only the late fulfilment of this boyish bravado. Be that as it may, the BIRKENHEAD Legislation and that of Lord CAVE who has amended and consolidated it, is coming in force at no distant date, as we all know, and most of us are doing our best to acquire some understanding of it. In this the Law Society is affording assistance. Sir BENJAMIN CHERRY will deliver a series of lectures in the Autumn at the Law Society's Hall in Bell Yard; these lectures are confined to members of the Law Society, but THE SOLICITORS' JOURNAL has received, with other legal journals, permission to publish a verbatim report of these lectures, and this should be of use to such of our readers as are not in a position to avail themselves of opportunities to hear the series delivered. The Solicitors' Managing Clerks Association, too, has arranged a series of ten lectures to be delivered, once a week, by Mr. TOPHAM, K.C., in Essex Hall. In connection with this series THE SOLICITORS' JOURNAL has been so fortunate as to secure the exclusive right of reproducing these lectures, and we are making special arrangements to publish in our pages what is sure to be a lucid exposition of the new Law.

Lord Darling and the Prison Reformers.

THE RECENT session in England of the International Prison Congress not only afforded to Lord HALDANE, Lord HEWART, The EARL OF OXFORD and other eminent "Men of Lawe" an opportunity of addressing this distinguished body of international jurists; it has also afforded to Lord DARLING an opportunity for entertaining the public by one of those delightful articles, so full at once of ironical wit and of bright literary allusiveness, which since his retirement he has contributed to the daily or the Sunday press. In his latest article Lord DARLING has made delicate fun of the "unknowns" who have congregated like birds of passage on our shores to pass resolutions advising the compulsory attendance of our judges and magistrates and prison governors at courses in psychology or sociology, and who, this task accomplished, have vanished like the swallows, presumably bound for warmer climes. Perhaps it is not necessary to say that the Prison Congress does not really consist of "unknowns"; it includes some of the world's great legists, and some of the foreign lawyers who attended it were in their own country jurists scarcely less eminent and deservedly esteemed than Lord DARLING himself. But that is a small matter; the point of Lord DARLING'S wit is not to be turned by showing merely that he is not very familiar with the *personnel* of legal reformers in other lands. The point he very skilfully attacks with his brilliant mockery is the absurdity of asking our judges and magistrates to attend classes, either in law or in any other subjects. True, such a proposal is unreal where English conditions are concerned. But in many other countries, *e.g.*, Germany, the judiciary is essentially a branch of the Civil Service whose members commence in youth at the bottom of the magisterial ladder, and work up by degrees to the higher rungs of the judiciary. Even in India we have arrangements not very unlike this in the earlier stages of a civil servant's career. But judges on the Continent frequently have to qualify for promotion by their attendance at courses of law, or by undertaking research work in some branch of legal learning; so that a body of international jurists, not unnaturally, saw no absurdity in suggesting the introduction of psychology and sociology into the group of studies thus undertaken. In England no one expects either judges or justices of the peace or clerks to the justices to attend

courses of lectures, but perhaps it is not very revolutionary to suggest that psychology, an all-important subject to the modern criminologist, might well be included amongst the subjects of which a really scholarly judge or teacher of law is expected to have a smattering of knowledge.

The Soviet Republic's Criminal Code.

WE HAVE just been perusing, not without interest, an English translation of the "Criminal Code of the Russian Socialist Federation Soviet Republic," which has been published by His Majesty's Stationery Office, apparently under the auspices of the Foreign Office. The translator is Mr. RAYNER, a barrister on the legal establishment of the Foreign Office. The document translated appears to be just one section from the Soviet Collection of Laws, 1922, namely article 153; it is supplemented by amendments made before 31st December, 1924, so that it is reasonably up-to-date What strikes the practitioner at once is its comparative, commonplaceness; the whole reads rather like the "Digest of Criminal Law," published by that famous judge and jurist, Sir JAMES FITZJAMES STEPHEN. There is a "General Section," consisting of five parts, which sets out such matters as "Extent of Operation of the Criminal Code," "General principles governing the application of punishment," "Determination of the Measure of Punishment," "Classification and forms of punishment and other measures of Social Protection," and "Regulations governing the serving of sentences." Really, these read rather like extracts from judgments delivered in the English Court of Criminal Appeal, or sententious reflections contained in the annual reports of our English Prison Commissioners—which by the way, are never read by anyone except the editors of legal journals and the legal editors of the daily newspapers, at least so we suppose. Then comes the "Special Section," which classifies the various kinds of crimes and codifies the punishments for each. Here, there are some surprises. Instead of our English classification into three heads, crimes against the person, property, and the State respectively, we find eight heads. These are (i) State crimes, divided into (*a*) Counter-revolutionary crimes, and (*b*) crimes against public administration; (ii) crimes committed by officials in the exercise of their duties; (iii) infringement of the regulations on church disestablishment; (iv) economic crimes; (v) crimes against life, health, liberty, and personal reputation (these comprise (*a*) murder, (*b*) assault, (*c*) abandonment in danger, (*d*) sexual crimes, (*e*) other personal offences, *e.g.*, defamation; (vi) crimes against property; (vii) military crimes, and (viii) infringement of regulations safeguarding public health, public authority and public order. The presence of "crimes against property" in the list, perhaps, rather conflicts with one's prepossessions as to the views of the Soviet. But all these matters are treated and subjected to punishment almost exactly as in English Law. "Abandonment in Danger" is the only topic which seems novel; but on looking up ss. 163 to 165*a*, which define this offence, one sees that it practically amounts to neglect of duty on the part of parents, hospitals, and poor law institutions. Altogether the code seems "severely orthodox" as a legal exhibit.

The Duty to Sign Cheques.

A PROCEDURE and a judgment which strike us as perhaps novel, although doubtless of great practical utility, are to be found in the recent case of *Preston* v. *Cotter*, *ante*, p. 796. In this case the defendant claimed to be the duly-elected president of an important trade union, but he did not see his way to sign certain cheques presented to him by the trustees and officers of the union as essential to the payment of salaries and the carrying on of the business administration of the trade union. Under the rules, apparently, it is the duty of the president for the time being to sign cheques on presentation to him as necessary for those purposes by one trustee and the treasurer; but the construction and effect of the rules were very doubtful. The trade union was obviously placed in an embarrassing position by the unwillingness of the president to sign cheques, and to get out of the *impasse* counsel was instructed to apply in the Chancery Division, by way of originating summons, for a declaration and an order that the president should sign such cheques. Some question arose as to procedure, and it was contended by the defence that a declaration and order of this kind, if the court is competent to make them at all, could only be made in an action, not on originating summons. Since, however, the judge was willing to do anything necessary to transmute the proceedings into an action commenced by a writ, this is not a matter of substantial importance. In fact, Mr. Justice EVE made the declaration prayed for on the motion and afterwards, having given liberty to set down a further motion, he made an order directing the president to sign cheques presented to him by one trustee and the treasurer, if properly so presented under the rules for the purposes of the society. This seems an unusual and vague direction, it is a matter which the court can scarcely control since it can scarcely hold the president responsible if he in the exercise of his discretion doubts the applicability of the order to any particular cheque presented; and in any case it is not easy to see how the court can have power to issue what is really a mandatory injunction to the official of a trade union in a matter which concerns its members *inter se*. However, the real advantage of the order is that it protects the president if he obeys it in any case clearly within its scope, and probably that was why Mr. Justice EVE rather stretched his powers to make the order. *Boni judicis est ampliæ jurisdictionem suae curiae*, is a very old maxim of our jurisprudence.

The Examinee and the New Law.

STORIES BEGIN to accumulate, which at any rate have the similitude of veracity, which indicate a growing interest in the New Law of Property on the part of examiners and examinees. In a certain recent law examination, we are, more or less credibly informed, the following questions and replies appeared. Question: "What is the Rule in *Shelley's Case*?" Reply: "Whatever the rule in *Shelley's Case* may once have been, thank GOD and Lord BIRKENHEAD it will cease to exist on '31st December, 1925'." Question: "What will be the difference between the estate of mortgagor and that of mortgagee on 1st January, 1926?" Answer: (Evidently by a lady student.) "Except as regards the physical differences of sex, which no Act of Parliament can alter, there will be no difference between the estate of a mortgagor and that of a mortgagee after 31st December, 1925. The New Law of Property Act has abolished all iniquitous sex anomalies as from that date, including those between the rights of a mortgagor and a mortgagee." Question: "What service has the Statute of Uses performed in the history of English conveyancing?" Reply: "It aroused in Lord BIRKENHEAD in his student days such irritation, that when he became Chancellor he repealed it, to the lasting benefit of all mankind except solicitors." The future career of the students who gave those answers should obviously be interesting.

The Trials of Juniors.

A propos of our topic last week on the "Trials of Juniors," a correspondent draws our attention to some witty remarks on the same subject recently made on circuit by a learned King's Bench judge. He mentions how, not very long ago, Mr. Justice RIGBY SWIFT told a story in court of his own experiences as a junior in the days when a famous law lord used to lead him. His leader was not in the least domineering; on the contrary, he was one of the pleasantest of men; but he had a curious habit of constantly letting go hold of all his papers in a moment of enthusiasm. His juniors were constantly employed, at a consultation or in court, picking up these scattered papers. "Swift, pick up those papers, please" was almost the only remark in the case, said the learned judge, which his leader ever made to him.

The Natural History of Law.

ENGLISH lawyers are the most practical of professional men. Studies of a speculative character are abhorrent to them. Even the historical side of legal scholarship has comparatively few votaries, and those are mostly to be found amongst college teachers or the occupiers of university chairs. Text-books, for the most part, even the most profound and scholarly, confine themselves to the utilitarian aim of elucidating the actual decisions of the courts or summarizing the complexities of intricate statute law. Any attempt to take a broader view tends to meet condemnation as a form of dilletantism.

Still, the point of view is beginning to change. In the United States, indeed, with its gigantic total of some three hundred bodies which claim university status, and where every one of the forty-eight federated states has a law school of its own, the output of really scientific research into jurisprudence has already been immense, and it is growing every day. Moreover, there exist across the Atlantic nearly a dozen first-class magazines, monthly and quarterly, devoted to the discussion of law. That extraordinary system of teaching law, by means of "Case-books," introduced into Harvard Law School by the late Professor JOHN BARR AMES,, and spread far and wide by that great scholar's enthusiastic pupils, but not yet heard of in England, is, perhaps, the most remarkable product of American originality applied to the teaching of an ancient academic discipline. Under this system the law student learns his law, not from any text-book, but from reading through and discussing in class, a series of carefully-compiled summaries of *all* the decided cases on the subject-matter—say, the Statute of Frauds—which are of real importance. In fact, the student learns his law precisely, *mutatis mutandis*, as it was learned by the judges who made it, namely, by the consideration of the previous decisions, after discussion with learned counsel. The system, indeed, is a sort of improved moot, on a gigantic scale, suited to the land which has built sky-scrapers, which removes stone houses on rails from one site to another, and which has harnessed Niagara.

But even in America there is not very much interest in pure jurisprudence. Here such work, as is done in any English-speaking country, is being done in the main by English teachers of law. And in this connexion we think attention ought to be drawn to the theories propounded by Professor DE MONTMORENCY, on two recent occasions, at Oxford. These theories will be found set out in a reprinted series of lectures, styled the "Natural History of Law," and published by the Oxford University Press, in 1921. They will also be found in a short contribution, styled "Law as a Social Science," printed in the *Sociological Review*, 1923, and originally delivered in the preceding year as an address at the Oxford Conference, on "The Correlation of the Social Sciences." In what follows we are largely indebted to those two publications for the account of Professor DE MONTMORENCY'S views here condensed and summarized.

Professor DE MONTMORENCY'S main thesis is that positive laws are not the mere accidental constructions of jurists and legislators anxious to find an ethical or a utilitarian solution for particular problems arising in disputes between man and man. On the contrary, a system of law is an attempt to ascertain certain general laws which necessarily govern all human activity in the social sphere, and to translate those general laws into the formulas which suit particular States. For example, the path of a planet round the sun is in ultimate reality, only one, and the same route; it obeys the mechanical laws found by KEPLER and by NEWTON; but it appears different to different observers in different spheres. It is, therefore, necessary to find a formula for converting the apparent motion in one sphere of reference to that measured by an observer in another sphere of reference; this was done by EINSTEIN'S Theory of Relativity. But the route taken by the planet is not a number of different routes, one in each system; it is one and the same route, only expressed in different terms according to the position from which it is observed. So is it with the law of human activity. There is just one route that can be taken if justice is to be done, and if the existence of humanity is to be saved from destruction by friction and collision. But the formulas in which different systems of jurisprudence express that one route appear to be different—all are only approximate measurements—and hence results the apparent differences between two systems of law, *e.g.*, the Common Law and the Roman Law. Something like this, if we have succeeded in understanding it, is the postulate assumed in Professor DE MONTMORENCY'S view.

All this, of course, sounds very abstract and very vague. We will endeavour to make it a little more concrete for our readers, by quoting some passages from Professor DE MONTMORENCY. After discussing the analogy between the Newtonian Law of Motion and the Law of Human Activity, he goes on to say: "For most minds it is sufficient to see that in an apparently Euclidean space the Newtonian laws are apparently obeyed. It may be that those laws have not universal application: it may be that the space about which we are accustomed to reason is a mirage after all, a fleeting vision of some nobler non-Euclidean reality of which Time is the fourth dimension. But, in any case the great Cambridge thinker gave us working rules, great generalisations from experience, which meet all ordinary tests. It is true that we cannot prove their validity, it is also true that we may prove their invalidity in the finer approximations to geometrical truth; but the rules or laws, at any rate, mark an epoch in human evolution. The same goal is in view with respect to the phenomena which we observe and class together as human laws and customs. From a very limited knowledge of those phenomena it is possible to advance the *a priori* theory that they are the manifestations of invariable laws of human consciousness, and even now it is possible to indicate in some vague manner what these invariable laws are. But until writers such as Sir JAMES FRASER, Dr. MARETT and others who are now working and have long worked—and I am especially thinking of the late Dr. W. H. R. RIVERS, taken, so untimely, from the task—can supply the correlated material, it will not be possible to formulate with any Newtonian universality and sharpness of definition the Human Laws of Motion. That is why I say that anything that I contribute to this Conference is but supplementary to what Dr. MARETT has said. Moreover it has to be remembered that such laws or rules, if formulated, are at the mercy of some theory of relativity in the realms of consciousness.

"Yet it would be idle to deny that already we are in a position to arrive at some approximate foundation of laws. The Law of Nature as it is called, has, through many centuries been detected by jurists and judges as operating in the manifestations of human law. The Law of Human Nature is a reality and one of the functions of the comparative study of law and of human institutions is to test, from a comparison of the raw material supplied by many races in many lands in many ages, whether this law of nature—whether what I call the Human Laws of Motion are invariable and have universal sway. So far as I have examined existing systems of law and existing bodies of custom I am inclined to think that the *a priori* argument may be supported by the objective material, and that even now it is possible to state, in a very rude, approximate form, these laws of motion. I state them (with much natural misgiving) in the following form:—

"1. A dominant tendency of the individual man (in direct heredity from an earlier grade of being), is to strive so to regulate the group to which he belongs as to afford to the group and therefore to the individual a maximum protection from the environment.

"2. Within the group the relations of individuals are always tending towards stability of conduct, and this tendency is due to an evolving principle in consciousness which is represented by the phrase *Fides est Servanda*.

"3. A dominant tendency of a group which has attained some measure of corporate life is to strive so to regulate the sum total of groups to which is belongs as to afford to the aggregate of groups, and therefore to itself, a maximum of protection from its environment.

"The implications from such rules seem to me to lead direct to the main sociological problems of our age."

We must not be supposed to endorse for a moment the correctness of Professor DE MONTMORENCY'S views. The creed he here outlines seems to be essentially a realistic or naturalistic creed, and most of the world's great thinkers on the philosophy of Law, *e.g.*, HEGEL, have taught a rationalistic and idealist theory of a very different type. But the important point is that the view we have just quoted at some length, does, at any rate, make a beginning of attacking the great problem: How is law possible as a rational and intelligible series of human phenomena? Any solution of this problem is better than mere refusal to attempt it. Scholars who are interested in "ends" as well as in "origins" will therefore feel grateful to Professor DE MONTMORENCY for his daring incursion into new domains of jurisprudence. SCRUTATOR.

The Legal Status of a Ferry.

THE right to hold a ferry across a navigable river and to charge tolls for user of that ferry by wayfarers, as all who recall their early lessons in Real Property Law will remember, is an incorporeal hereditament of a rather peculiar form. It belongs to a genus of which the other species are market, warren, forest, fishery and foreshore. All these were in their origin rights belonging to the Crown as lord paramount of the land in our feudal system of tenure. Technically, they were incidents of the *Patrimonium*, just as on a lower scale, the right to charge fines for admittance of a copyholder were incidents of the manorial lordship, and just as the right to commit waste without impeachment by anyone is an incident of tenancy in fee of a freehold. But this incident of the *Patrimonium*, of course, was not usually reserved by the Crown; the King granted it out to the subjects who in such particular case now possess it. In fact, the enjoyment of a market, ferry, fishery or foreshore by the owner of a manor or other subject, is now usually based on the fiction of a lost grant from the Crown. All this is elementary law: but the exact character of the ferry itself is less familiar. In reality it is part of a highway: that is to say, it is that part of a highway which lies in the waters of a navigable river, when it crosses one, provided it crosses otherwise than along the surface of a bridge.

This character of a ferry, we believe, was first pointed out clearly by Lord PARKER in *Hammerton* v. *Dysart*, 1916, A.C. 57. It has been pointed out again with great clearness by Mr. Justice RUSSELL in the very recent case of *East Riding of Yorkshire County Council* v. *The Company of Proprietors of Selby, Bridge*, *ante*, p. 775, a decision given so very recently as the last week in June. Both Lord PARKER and Mr. Justice RUSSELL adopt the view of a ferry expressed in "Woolrych's Law of Ways," 2nd ed., p. 363. There the following passage occurs: "The same principle which compels us to call a bridge over the river a common highway applies to a ferry, for it is a common passage which is no more than a common highway." Of course, the owner of a ferry, in the absence of a public right to the contrary acquired by dedication and user, is entitled to charge a toll for use of his ferry; but then so is the owner of a new road unless and until he has dedicated it to the public. Although turnpike tolls on roads disappeared towards the close of the nineteenth century, such tolls are still common enough in the case of bridges. This passage from "Woolrych" appears in Lord PARKER'S judgment in *Hammerton* v. *Dysart*, *supra*, in this altered form: "A ferry may thus be regarded as a link between two highways crossing the water," *ibid.*, p. 79. We should have preferred to call it *a stage in one continuous highway part of which is under water*; but no difference of principle arises from those two rather different conceptions of the historical origin of ferries.

In the case which came before Mr. Justice RUSSELL, the *Selby Bridge Case*, *supra*, this character of a ferry was only incidental to the main decision nor did that decision depend to any great extent upon any definition of a ferry. The facts were these. The Ouse at Selby is crossed by a swing bridge built by a private company, constituted under an Act of 1791, to take the place of the old ferry at the spot which carried the highway from London to York—the Great North Road or one of its detours—across the river at Selby. The company were empowered under the Act of 1791 to make the bridge and the approaches to the bridge; they were authorized to charge tolls for the use of the bridge; also under the terms of the Act both bridge and approaches were vested in the company. Houses had been built on the land adjoining the approaches to the bridge, including a public institution belonging to the East Riding County Council. The bridge company claimed the right to restrain the owners and occupiers of such houses and their "invitees," including persons visiting the institution in question, from trespassing, as they regarded it, on the approaches to the bridge, *i.e.*, using those without payment of the tolls for pontage. This claim was disputed by the County Council, who took action in the Chancery Division for a declaration, which they obtained, that owners and occupiers of land adjoining the approaches to the bridge are entitled to access to their homes over the approaches without paying tolls, so long as they did not actually cross the passage over the bridge.

Mr. Justice RUSSELL'S decision turned on the view that, whatever the precise terms of the Act of 1791 might be, the real object of that statute was simply to substitute for the out-of-date ferry a more convenient form of water-highway, namely, a bridge. The Act did not alter the character of the public rights nor the highway and the passage across the navigable river; it merely put a bridge with tolls in place of a ferry with tolls. The wayfarer using the highway before 1791 had to pay a toll the moment he attempted to step into the ferry; now he must pay one when he put foot on the bridge. But the pre-1791 passenger never paid ferry-tolls while merely approaching the ferry along the highway; nor can he now be charged pontage while merely approaching the bridge in a similar manner. The duty of making approaches to the bridge and of maintaining them, imposed on the proprietors of the bridge by the Act of 1791, does not by necessary implication alter the character or the extent of the public rights over such part of the highway as is comprised within the approaches. PONTIFEX.

Readings of the Statutes.

The Nine Acts and the New Law.

VI.—THE LAW OF PROPERTY ACT, 1925, PART II.

We have now reached the second part of the Act of 1925, and this concerns a very different subject-matter from the first Part. The earlier part, as we have seen, contains the leading principles of the New Law of Property and the New Conveyancing. But Part II, on the contrary, is concerned exclusively with the machinery incidental to the practice of the Art of Conveyancing; it deals with the Contract, the Conveyance, and with certain other Instruments. In extent it is about equal to Part I, for the latter contains ss. 1 to 39 of the Act, whereas its successor contains ss. 40 to 84, inclusive. Of these forty-five sections, eleven (ss. 40

to 50) inclusive are devoted to Contracts; twenty-five (ss. 51 to 75 inclusive) are allotted to Conveyancing and other instruments; while the final nine (ss. 76 to 84) deal with Covenants. A considerable portion of the matter contained in those clauses, but by no means all, consists of amendments to or modifications with amendments of the Conveyancing Acts, and allied statutes.

CONTRACTS FOR THE SALE OF LAND.

A sale of Land, both under the Old Law and the New, necessarily involves the following steps:—

First: An agreement to sell.

Second: Proof of Title by the Vendor.

Third: Completion by the Execution of a Conveyance, accompanied usually by payment of the purchase money.

The Machinery of Conveyancing is concerned in the main with these three stages. The first stage is the simplest. The chief concern in connection with this stage is the determination of the Conditions of Sale. The second stage raises a host of difficult problems and here naturally the chief changes made by the New Conveyancing will be found. It involves the preparation of an Abstract of Title by the vendor's legal advisers and the testing of that Abstract by the purchaser's legal adviser, but that is familiar to every practitioner, The third stage is concerned solely with the proper Form and Precedent of Conveyance to employ, with the modifications necessary in the precedent followed to suit the particular circumstances of the actual transaction, and with the correct filling in of the necessary particulars. Here the New Law has followed the model set by the Conveyancing Acts; it suggests shortened forms and hosts of implied covenants for special classes of transactions in order to lighten the labours of the draftsman. We must discuss the New Law on these matters very briefly, for full analysis of its details is not possible within our limits of space.

THE RULES AFFECTING CONTRACTS.

A prime requirement in contracts relating to the sale of land, of course, is the compliance necessary with the ceremonial requisites as laid down in s. 4 of the Statute of Frauds, This section is now replaced by s. 40 of the Law of Property Act, 1925. No alteration, however, is here made in the existing law. Only, there is now an *express* statutory recognition of the exceptions which have always existed, in the case of Part Performance and Sales by Order of the Court, to the normal requirement of a memorandum in writing signed by the vendor or his duly authorized agent.

An important point in connection with contracts is the difference between stipulations which are deemed to be of the essence of the contract and those which are not. Here s. 41 incorporates s. 25 (7) of the Judicature Act, 1873, and enacts that any stipulations which, according to the Rules of Equity, are deemed not to be of the essence of the contract, are to have that effect also in the New Law. This involves no real change in the Law.

Much more important, however, is the attempt of the draftsman to prevent evasion of the New Law by means of cunningly devised stipulations in contracts. Were parties to a contract allowed to contract out of the provisions, of the Curtain Clauses, which the New Law establishes to protect purchasers for value, it would not be difficult to completely drive a coach and four all through the New Conveyancing. To avoid this great disaster, s. 42 of the Act of 1925 contains a number of rules avoiding—in favour of a purchaser for money or money's worth— stipulations which would have that effect. It renders void, accordingly:—

First: Any stipulation that the purchaser of a legal estate shall accept a title made with the concurrence of any owner ot an equitable interest. This is avoided whenever the vendor is able to make a title, free from the burden of that equitable interest, either under the Law of Property Act, 1925, or under the Settled Land Act, 1925, or under a Trust for Sale, or under any other statutory enactment.

Second: Any stipulation is void which throws on the purchaser of a legal estate the costs of getting a vesting order or of appointing trustees, or the preparation, stamping, and execution of a conveyance or trust for sale, or of a vesting instrument for bringing the Settled Land Act provisions into force.

Third: Any stipulation (in the case of contracts for sale or exchange made after 1925) is void which provides that an outstanding legal estate shall be traced or got in by or at the expense of a purchaser, or that he shall not object to it remaining outstanding.

Again, s. 42 endeavours to prevent ingenious contrivances for evasion of another kind. Vendors anxious to retain the legal estate while in effect selling the land might try to do so by selling only Mortgage Terms or Equitable Interests or Entailed Interests or Undivided Shares. To prevent this, s. 42 enacts as follows:—

First: The Sale of a Mortgage Term is deemed to convey either the fee simple or the reversion, according as the property is freehold or leasehold.

Second: The Sale of an Equitable Interest is deemed to convey the fee if the vendor has power to convey that estate or can require it to be vested either in himself or in a purchaser.

Third: The sale of an Entailed Interest in possession is deemed to imply the sale of the fee or the term of years absolute, as the case may be, if the vendor can either convey or call for the vesting of these.

Fourth: The agreement to sell an Undivided Share is fulfilled if the vendor conveys his share in the proceeds of sale.

Fifth: Sales under the compulsory purchase powers of the Land Clauses or other Acts are deemed to be of such a kind that, if the vendor can make a title without payment of the compensation money into court, he must make his title in this way unless the purchaser otherwise requires.

But now, it may be suggested, it is all very well to give the purchaser these rights *dehors* the agreement he has entered into. But what if the vendor, who has contracted otherwise, refuses to complete in the way the statute requires, and asks for the rescission of the contract on the ground that, as modified by the statute, it is not the bargain he intended to make. This, however, is not permitted. Section 42 (8) forbids rescission in such a case.

As regards Registered Rights, where it is the case under the New Law that the purchaser is entitled to acquire the legal estate free of rights and interests burdening the land, but where it so happens that these rights are in fact registered, what then is the position? The purchaser is given an option of two alternatives by s. 43. He can call on the vendor to do one of two things: either (1) obtain the cancellation of the registration at his own expense, or (2) obtain the cancellation by the owner of the registered rights at his own expense. If the vendor can do neither, the purchaser retains his right to rescission, and any stipulation to the contrary is avoided by the section.

Again, new provisions as to the length of title which must be shown are set up by s. 44. These are as follows:—

(1) Length of Title.

This is now thirty years instead of forty in the case of an open contract, but, of course, the parties are at liberty —as at present—to stipulate for a shorter title. Advowsons, Tithes, Crown Grants, Leaseholds and Reversionary Interests, however, are not included within this reduction to thirty years.

(2) Assignment of Leases.

The Assignee for money's worth of a lease is no longer affected with notice of enquiries which could only have been discovered if called for the freehold or leasehold reversionary title. Of course, neither under the old law nor the new is he entitled to call for production of that title.

(3) Extinction of Manorial Incidents.

The purchaser of freeholds or enfranchised copyholds subject to manorial incidents is not affected with notice of anything which would have been discovered on production of the superior title, nor can he call for that title.

(4) Constructive notice of Prior Title.

This, of course, is abolished. That, indeed, is one of the primary minor achievements of the New Conveyancing.

Another of the improvements effected by the New Law is the provision made in the case of statutory conditions of sale by the s. 45. These include:—

First: Vendor's right to retain title deeds. (No change here.)

Second: Purchaser's right to require production of a copy of—

(*a*) Power of attorney, under which a document in the Abstract has been created.

(*b*) Any document disposing of or creating an interest, powers or obligations not shown to have expired.

(*c*) Any document creating a limitation or trust by virtue of which there has been made a disposition referred to in a document included in the abstract.

Third: The cost of printing documents in the possession of the vendor's mortgagee or trustee, is now placed on him, instead of, as at present, the purchaser.

An important point in connection with open contracts is contained in s. 46. The Lord Chancellor is empowered to prescribe Forms of Contracts and Conditions of Sale relating to land, which the parties may or may not adopt as they please. In every contract by correspondence those conditions are implied in the absence of a contrary intention; but in other open contracts they are not implied unless incorporated by express reference.

Another matter which affects purchasers concerns the benefit of insurance policies carrying property transferred from A to B during the currency of the policy. Hereafter the policy enures for the protection of the purchaser, to whom the policy moneys are payable by the vendor so soon as he has received them. But this provision is subject to any stipulation to the contrary, to the consents of the insurers when required by the contract of insurance, and to the payment of a proportionate part of the premium by the purchaser.

Section 48 contains a provision for which purchasers will sometimes be grateful; stipulations in conditions of sale which tie down the purchaser to employment of the vendor's solicitor or any particular solicitor, are rendered void, nor can a lessee insist on the conveyance being made by the lessor's solicitor at the tenant's expense. The lessor, however, can stipulate requiring registration with him of assignments and devolutions of the lease, for which he may make a charge of one guinea.

Section 49 lays down express statutory rules governing the return of money deposited under a contract for sale; this gives the court power to make such order for repayment of the deposit as it may think just.

Lastly, s. 50 confers on the court an express statutory power and duty to declare land free from incumbrances when sufficient money has been paid into court to discharge the whole incumbrance.

THE MACHINERY OF CONVEYANCING.

So far we have considered only those portions of Part II which relate to Contracts for the Sale of Land. Limits of space have prevented us from going on to attach the large question of Implied Covenants, nor have we been able to include the new provisions as to the construction of Conveyances. If the plan of this series affords an opportunity, these will be dealt with later on. And in any event, we propose to discuss next the position relating to "Abstracts of Title," which emerges under the New Conveyancing.

(*To be continued.*)

RUBRIC.

A Conveyancer's Diary.

THE "CURTAIN CLAUSES" IN CONNECTION WITH PURCHASES.—VI.

We now come to s. 2 (1) (ii) (*a*), and s. 21 of the Settled Land Act. These sections contain practically the only new law in the "curtain clauses," but, as far as they go, they are very important. They empower *a beneficial estate owner* to himself create the machinery for overreaching equitable interests and powers. It should be pointed out at once, though, that this power is a very limited one, as the excepted cases where he cannot do this leave very few cases for the rule to work on. Section 2 (1) (ii) (*a*) provides in effect that where the legal estate affected was not, when the equitable interest or power was created, subject to a trust for sale or a settlement, then, if the estate owner, whether before or after the commencement of the Act, disposes of his estate to trustees upon trust for sale, and at the date of a conveyance made, after such commencement, the trustees are either two or more individuals approved or appointed by the court, or a trust corporation, such equitable interest or power will be overreached by the conveyance.

New Law in the Curtain Clauses.

Under the alternative section—s. 21 of the Settled Land Act—where a person is beneficially entitled in possession to a legal estate subject to any equitable interests or powers, he may, after 1925, declare by deed that such legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the legal estate. This deed will be deemed the principal vesting deed and must be executed by two or more trustees approved or appointed by the court or a trust corporation, and it must be stated therein that they are the trustees of the settlement for the purposes of the Act. The trust instrument will be the instrument under which his estate arises or is acquired, and the instrument (if any) under which the equitable interests or powers are subsisting or capable of taking effect. If none, a trust deed will have to be executed. The effect of the declaring deed will be that the owner and his successors in title, being estate owners, will have the powers of a tenant for life. Any capital money arising on the transaction will have to be paid to or by the direction of the trustees or into court.

Alternative Methods of Overreaching Equities.

There are the same exceptions to this section as there are to s. 2 of the Act, and which have already been given in full.

It is not clear why there should be alternative methods for an owner to override equitable interests and powers. In practice, it is anticipated that whichever of the two methods turns out to be the easier and the cheaper to work will be adopted to the entire exclusion of the other.

An eminent conveyancer has stated his opinion that to save expense the consent of the incumbrancer could be obtained to the sale. But would not this case come within s. 42 of the Act already referred to, that a stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void if a title can be made discharged from the equitable interest without such consent (*inter alia*) "under this Act"? The words "under this Act" would certainly not apply to s. 21 of the Settled Land Act, but would not they apply to s. 2 (2) of the Act?

The next case to discuss is the case of a mortgagee selling. By s. 2 (1) (iii) where a conveyance is made by a mortgagee in the exercise of his paramount powers, to a purchaser of a legal estate in land, it will overreach any equitable interest or power affecting the estate, whether or not he have notice thereof, if the equitable interest or power is capable of being overreached. The answer to the question as to when the equitable interest or power is capable of being overreached will be found in ss. 88, 89 and 104 of the Act.

Sale by Mortgagee.

L. E. EMMET.

Recent Cases in Shipping Law: Summary.

BILLS OF LADING.

Buerger *v.* **Cunard S.S. Co. Court of Appeal. 69 Sol. J. 573.**

In this case the Court of Appeal had to consider the effect of a deviation by consent, not contemplated in the bill of lading, on the operation of the exceptions in the original bill of lading. The plaintiff shipped eight cases of cloth by one of the defendant company's steamers for carriage from London to Odessa. The value of the cloth exceeded £3,000, but the plaintiffs had not disclosed their value. The bill of lading contained exceptions which, *inter alia*, relieved the carrier from liability for loss of goods worth more than £20 unless extra freight had been paid on an agreed value.

When the steamer on her voyage to Odessa reached Constantinople, in April, 1919, the Bolshevists were pushing operations through the Ukraine, and seemed likely to capture Odessa at no distant date. This situation was considered by the agents at Constantinople of all parties concerned in the adventure, and it was agreed that the voyage to Odessa should be abandoned; three of the cases were to be landed at Constantinople and five were to be taken on to Batoum. All the cases were afterwards lost in circumstances which would have rendered the shipowners liable under the original bill of lading, but for the exceptions protecting them in the event of goods exceeding £20 shipped without a declaration of value. The owner of the cases of cloth sued for non-delivery of the cloth, while the defendants pleaded that they were protected by the exception in the original bill of lading.

The Court of Appeal held that the defendant company would only be protected by the exception if they could show that the loss would have occurred if the original adventure had been carried through, and the ship had gone to Odessa. Since they could not show this, they were fixed with their common law liability as carriers for loss of goods not delivered by them.

CHARTER-PARTIES.

Rederi Aktiebolaget Transatlantic *v.* **Board of Trade. Mr. Justice Roche. 30 Com. Cases 117.**

This case raised a difficult question as to the liabilities of shipowners for the proper discharge of goods shipped under unusual circumstances. The plaintiffs as shipowners had chartered the s.s. "Silgan" to charterers (who were in the events that happened represented by the Board of Trade) for a voyage from New York to Beira and other ports in South Africa. The steamship had no elevating tackle on board which could lift weights exceeding 5 tons. But at New York the charterers placed on board railway machinery, consigned to Beira, of such extreme bulk that single parts of the equipment, in some cases, exceeded 5 tons in weight.

When in due course the "Silgan" reached Beira, she could neither discharge this heavy equipment with her own tackle, nor find at that port any available tackle capable of dealing with it. Therefore, without prejudice to the rights of the parties, the ship was sent by agreement of the parties to the port of Durban; there she unloaded, and the goods were subsequently forwarded to Beira by another steamship. This, of course, involved an extra incurring of expenses by way of carriage; it also involved extra expenses of unloading at Durban. The charterers paid the latter expenses, but claimed that the outstanding balance of freight should fall on the shipowners. The matter was referred to arbitration, and the umpire made an award in favour of the plaintiffs' (shipowners) claim to receive the balance of freight, but stated his award in the form of a special case for the opinion of the High Court. This award was confirmed by the Court.

Mr. Justice Roche, in substance, made the following findings:—

First: Whatever rights the charterers might have had under the common form "cesser" clause, which was embodied in the charter-party, they had waived these and had themselves arranged for the steamship to be sent to Durban.

Second: The charterers were not only charterers of the ship, but also consignors of the cargo under the bill of lading, and as such were liable for the freight as consignors, quite irrespective of the charter-party, so that where the rights of the parties under the latter were inoperative, their respective obligations as shipowner and consignor came into operation.

Third: Under the charter-party the shipowners had powers to tranship goods; the goods in the end reached their destination, although transhipped; therefore freight was payable.

Fourth: Under the express provision of this particular charter-party the shipowners had discharged their duty, and were liable for the freight.

Aktiebolaget Nordiska Lloyd *v.* **Brownlie & Co. Court of Appeal. 41 T.L.R. 503.**

This case raised a most important point on the obligation of shipowners to give notice of "readiness to load" and the option of charterers to cancel if that notice is not given. In the event the Court of Appeal reversed a decision of Mr. Justice Branson on the construction of the charter-party in suit. The facts are shortly summarized here.

The shipowners chartered a steamship to the defendant charterers to go to the Humber and there load a cargo as ordered. The charter-party contained the following clauses (*inter alia*):—

"Clause 3B: The cargo to be loaded in 84 running hours. . . . Time to count when written notice of readiness to receive cargo is handed in to the office of the charterers' agents on weekdays between the hours of 9 a.m. and 6 p.m. and noon on Saturdays."

"Clause 7: If steamer be prevented from entering harbour or docks or from arriving at or off loading places by reason of congestion of shipping or shore traffic (not due to strikes . . .), she is to be treated as a ready steamer from first high water on or after arrival at or off harbour or docks or so near thereunto as she may be permitted to approach and entitled thereupon to give written notice of readiness . . . "

"Clause 8: If steamer be not loaded in the time allowed she is to lie on demurrage . . . "

"Clause 11: Time for loading unless used not to count before 6 a.m. on March 21, and charterers to have option of cancelling this charter . . . if steamer is not ready from any cause on or before 6 a.m. on April 3."

In the events that happened the vessel was ordered to load at Hull. She arrived off the docks of that port on Saturday, 31st March. The shipowners alleged that from that time on she was ready to load, but the master did not give notice of readiness to load until 9 a.m. on Tuesday, 3rd April. This was due to the fact that on Saturday, when she arrived, the first high tide succeeding her arrival was at 5.21 p.m. and after normal working hours; next day was Sunday; and the next was Easter Monday. The charterers claimed the right to cancel the charter-party on the ground that the vessel was not a "ready" vessel within the meaning of clause 2, until 6 a.m. on Tuesday, 3rd April, the date at which their option of cancellation came into existence under the terms of that clause. The plaintiffs contended that the vessel was in fact a "ready" vessel on Saturday, although no notice of "readiness to load" had been given; a "ready" vessel does not mean a vessel which has given notice of "readiness to load," but one which is in fact ready to load.

The Court of Appeal, reversing Mr. Justice Branson as mentioned above, found in favour of the shipowners' contention that under clause 7 the steamship was a "ready" vessel when she arrived on Saturday, and that failure to give notice of readiness to load did not bring into being the charterers' option to cancel under clause 11. Therefore the shipowners were entitled to damages for non-performance of the charter-party by the charterers.

United States Shipping Board v. Bunge v. Born. Court of Appeal. 30 Com. Cas. 129.

In this case the Court of Appeal affirmed the decision of Mr. Justice Bailhache in a case raising an interesting point in the law of demurrage.

A steamship which was constructed to burn oil fuel, not coal, was chartered to carry goods from the River Plate to a safe port in the United Kingdom, or on the Continent, between Marseilles and Hamburg (both included). Clause 29 of the charter-party provided that "the steamer shall have liberty to call at any port or ports in any order for the purpose of taking bunker coal or other supplies." The vessel carried a cargo, part of which was to be discharged at Malaga and part at Seville. It was arranged that Malaga should be the first port of discharge. The vessel, after discharging at Malaga, had just sufficient oil fuel to carry her to Seville, but not sufficient to carry her to any further port, and no oil fuel was obtainable at either of those ports. In these circumstances the ship called at Gibraltar to obtain oil fuels from a tank steamer due there, but which in fact had not arrived. Thereupon the ship went on to Lisbon to bunker, but Lisbon is not a port between Malaga and Seville or Gibraltar to Seville. The charterers alleged that this was an unauthorized deviation and claimed demurrage or damages for the deviation.

The court held that the words "liberty to call at ports *in any order*" in clause 29 of the charter-party (quoted *supra*) must be construed as limited to ports *in the direct route* from the named ports, and that therefore the deviation was "unauthorized" so that the charterers were entitled to recover damages for the deviation.

Van Nievelt Goudrian & Co. Stoomvaart Maatschappij v. Forslind and Son. Court of Appeal. 41 T.L.R. 48.

In this case the Court of Appeal affirmed an important decision of Mr. Justice Rowlatt as to the date at which lay days commence to run, under certain issued forms of charter-party, modified by additions.

The plaintiffs were owners of steamships which they chartered to the defendants to bring cargoes of pit props to West Hartlepool. Each charter-party was a printed charter-party, following the Scanfin form, but containing typed additions thereto. By the printed part it was provided that the cargo should be discharged "in the customary manner as fast as the vessel can deliver during the ordinary working hours of the port"; if the vessel was not discharged with despatch as therein required demurrage of £40 a day was to be payable. But the typed additions provided *inter alia* that the cargo was "to be loaded and discharged according to the custom of the ports, but not less than the average rate of 100 fathoms per weather-working-day, Sundays and holidays excepted, reversible"; the owners were to pay the charterers despatch money for all time saved in loading and discharging at the rate of £20 a day.

Now, when the vessel arrived at West Hartlepool, the following conditions prevailed there. The railway company owned the docks. Ships could discharge only at quays to which the company might order them forward in their turn. The port was congested, and there was delay before the ship could get a discharging berth. The question arose as to who shall bear the loss thus occasioned.

The Court of Appeal held that the joint effect of printed and typed parts of the form was to bring lay days into being so soon as the ship reached West Hartlepool, whether or not a berth for loading was ready, and that therefore the shipowners were entitled to demurrage as from that day.

COLLISIONS.

The "Chekiang." Court of Appeal. 1925, p. 80.

In this case the Court of Appeal remitted to the Registry for reconsideration the assessment of damages arising out of a collision between a steamship and a cruiser; the point of the case turns on the fact that a cruiser is not a "profit-earning vessel," so that the usual measures of loss due to detention of a vessel do not apply in her case. In this particular case H.M.S. "Cairo," a light cruiser owned by the Admiralty, was the party found not to blame in a collision with the defendants' steamship. An action for damages for collision was brought by the Admiralty. The defendants admitted liability and the *quantum* of damages was referred to the Registry for assessment.

The "Cairo" was temporarily repaired at Hankow. She proceeded to Hong Kong for permanent repairs. She was shortly due to undergo annual refitting at that station, and, not unnaturally, in view of the collision, the Admiralty decided it would be more economical to do both sets of repairs at the same time, namely, those required by the collision, and those otherwise necessary in ordinary course. The whole work of repairing took eight weeks, of which the collision repairs occupied twenty days, but the refitting work, had there been no collision repairs, although otherwise less costly, would also necessarily have been spread over eight weeks, so that no part of this period of detention for repairs was absolutely caused by the collision. The Registrar, however, took the view that, as the refitting would not have been attempted until a later date, but for the need of executing collision permanent repairs, the Admiralty were entitled to recover detention damages for twenty days from the shipowners. These he estimated as follows: (1) 5 per cent. interest for twenty days in the capital value of the cruiser, and (2) the pay and allowances of officers and men for twenty days. The Court of Appeal remitted the case for re-assessment.

The Court of Appeal, in so remitting the case, held:—

First: the damages had been assessed on a wrong principle; the customary rules applied had no reference to the actual loss of the Admiralty, which was the sole measure of damages.

Second: The Admiralty must have lost the use of their ship for eight weeks whenever the refitting took place, so that no part of the period was properly imputable to the tort occasioning the collision and the collision repairs.

Third: There is no rule of law or practice which directs a conventional mode of calculating the damages for loss of a non-profit earning vessel without reference to the actual facts of each case.

SALVAGE.

S.S. "Melanie" v. S.S. "San Onofri." House of Lords. 1925, A.C. 246.

In this case the House of Lords reversed (Lord Blanesburgh *dubitante*) the decision of the Court of Appeal and restored the decision of Mr. Justice Bailhache to the effect that when a vessel is under a statutory duty, under the Maritime Conventions Act, 1911, to stand by and tow another vessel after a collision, and where she discharges this duty, but does not thereby materially contribute to the safety of the injured vessel, which was finally salved by tugs next day, the vessel thus discharging a statutory duty cannot claim by way of salvage a *quantum meruit* for the services thus actually rendered, since no claim under this head arises unless actual safety is the result of the task attempted.

CASES OF TRINITY SITTINGS.

Court of Appeal.

No. 2.

The Controller of the Clearing House *v.* Weir and Co.

June 29th.

CONTRACT—OPERATION OF CONTRACT—SUSPENSION OF CONTRACT DURING HOSTILITIES—INTEREST—INTERVENTION OF CLEARING HOUSE UNDER TREATY OF VERSAILLES—JURISDICTION OF JOINT CLEARING HOUSES—TREATY OF VERSAILLES, s. III, Part, 8, Annex, para. 22.

The Controller of the Clearing House is not entitled to bring an action for the recovery as a debt of a sum ordered to be paid to him by an English national, as moneys due to a German national under the provisions of the Treaty of Versailles for the settlement of debts due to and from enemy nationals, by an unappealed joint decision of the British and German Clearing Offices appointed under the Treaty of Versailles and the consequent Treaty of Peace Orders.

This was an appeal brought by the defendants against a judgment of Mr. Justice Finlay in favour of the Controller of the Clearing House in an action in which the latter sued to recover as a debt from the defendants the sum of £15,540 7s. 9d. found due by four joint decisions of the British and German Clearing Offices by way of interest on a debt owing by the defendants to a German national. The joint decisions purported to be given under powers conferred by para. 22 of the Annex to s. III, part X of the Treaty of Versailles. The defendants had not appealed from these four decisions to the Mixed Arbitral Tribunal, as provided under the Treaty of Peace Order, 1919. Mr. Justice Finlay held that, as the defendants had not so appealed, the joint decision of the Clearing office created a debt for which the Countroller could sue. The defendants appealed, and the Court of Appeal allowed the appeal.

The facts of the case, as summarised here from the judgment of Lord Justice Bankes, were briefly these :—

In the year 1913, the appellants had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to the appellants' agent alongside the vessel at the port of Iquique and payment for which was to be made in London within a certain period after presentation of the bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination, and before the bills of lading, which were made out to order, could be presented. In these circumstances the appellants procured delivery to their sub-purchasers by giving an indemnity to the carriers, and presumably received payment for the nitrate from their sub-purchasers. After the war the German sellers duly notified their claim for the price of the nitrate and for interest to the German Clearing Office, who in turn passed it on to the English Clearing Office. The appellants were quite prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Art. 296 of the Treaty, and they disputed the claim for interest. As the Treaty only contemplates the admission of debts, and the appellants were prepared to pay the amount claimed as the price of the goods, the English Clearing Office admitted the principal debt. At a later period a claim was put forward for interest. This claim the appellants have always disputed, and for a considerable time the Controller adopted the attitude that the matter was one which the claimants would be entitled to refer and would have to refer to the Mixed Arbitral Tribunal.

At a later stage, the two Clearing Offices arrived at a joint decision that interest was payable upon each of the principal sums admitted by the British Clearing Office. Notice of these decisions was conveyed to the appellants in a letter dated 13th September, 1923. The decisions took the form of an intimation that the British and German Clearing Offices had jointly agreed that interest in accordance with para. 22 of the Annex was payable upon the admitted debt at the rate of 5 per cent. per annum calculated from the dates specified in each decision. Each notice then continued as follows: "In default of a notice of appeal under Rule 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting and advice to the German Clearing Office will be credited by the British Clearing Office to the German Clearing Office." It was this joint decision which the Controller sought to enforce in this action.

The claim was for a large sum of money alleged to be payable as interest, and the cause of action as formulated on the writ was thus stated: "The plaintiff's claim is against the defendants for £15,540 7s. 9d. being the total of sums found due by four joint decisions of the British and German Clearing Offices from the defendants by way of interest under para. 22 of the Annex to Section III of Part X of the Treaty of Versailles, the provisions of which section in virtue of the Treaty of Peace Act, 1919, 9 and 10 Geo. V. Chapter 33, and the Treaty of Peace Order, 1919, made under and in pursuance of such Act, have full force and effect as law. The time for appeal against such decision as provided by paragraph 20 of the said Annex, and the rules of procedure of the Mixed Arbitral Tribunal, has expired, and no appeal has been lodged. The plaintiff claims pursuant to Article 1 (iv) and 1 (x) of the Treaty of Peace Order, 1919."

Lord Justice BANKES delivered judgment, allowing the appeal with costs, to the following effect :—

The question for decision lies in a small compass, and turns entirely on the construction to be placed upon the material provisions of Art. 296, s. III, Part X of the Peace Treaty and of the Treaty of Peace Order, 1919. The material portion of the Peace Treaty is that relating to debts and to the recovery of debts, due or alleged to be due from a national of one of the contracting powers to a national of another contracting power. Article 296 of s. III, Part X of the Treaty and the Annex to that Article contain the provisions constituting the machinery by which such debts are claimable and recoverable. I do not propose to trace the procedure step by step. It is sufficient to say that the foundation on which the machinery rests is the prohibition of any direct communication between creditor and debtor, and the setting up in the country of each contracting power of a clearing office by which or through which all claims are to be prosecuted and all claims either settled or put in train for settlement. To make the scheme of debt-collecting provided for in the Treaty complete it was obviously necessary to make some provision for enabling the debtor clearing office, that is to say, the clearing office of the country of the debtor, to recover from the debtor sums of money which under the procedure laid down the debtor clearing office had rendered itself liable to allow in account with the creditor clearing office, that is to say, the clearing office of the country of the creditor. The setting up of the necessary machinery for this purpose was by para. 14 of the Annex left to the Governments concerned. The provision is that these Governments would invest their respective clearing offices with all necessary powers for the recovery of debts which had been admitted. In the case of this country the necessary powers were conferred by the Treaty of Peace Act, 1919, and by sub-clauses IV. and X. of clause 1 of the Treaty of Peace Order, 1919.

It is necessary to refer to the language of sub-clause IV of clause 1 of the Treaty of Peace Order, 1919. That sub-clause divides enemy debts enforceable by the Clearing Office into two classes: (*a*) Debts which are enforceable upon the footing that the Clearing Office has all the rights and powers of the creditor;

(*b*) Debts admitted by the debtor or found to be due by arbitration, or by the Mixed Arbitral Tribunal or by a Court of Law as provided by para. 16 of the Annex. It is clear that the latter are a privileged class, for with regard to them all that the Clearing Office need do is to issue a certificate, which certificate is to have the effect of a judgment recovered in the court in which it is presented. In the case of this country it is clear that, whether by accident or by design, a joint decision is not rendered conclusive in the same way as the decision of a court or of a Mixed Arbitral Tribunal or of an arbitrator, and the right (if any) of the Clearing Office as represented by the Controller is to proceed under the powers conferred upon him by sub-clause IV of Art. 1 of the Treaty of Peace Order as standing in the shoes of the creditor. To adopt the argument for the respondent, namely, that the court ought to give effect to the joint decision as if it stood for all practical purposes on the same footing as one of the decisions specially mentioned in the privileged class, is to ignore the marked distinction which is drawn between the two in the Treaty of Peace Order, 1919.

As a matter of substance, therefore, as well as a matter of form, for the two reasons given I am of opinion that it was not open to the respondent to take proceedings based merely on the joint decision unappealed from.

COUNSEL: Appellants: *Sir Leslie Scott*, K.C., and *Darby*; Respondents: *Sir Douglas Hogg*, K.C. (Attorney-General), and *Somervell*.

SOLICITORS: *Thomas Cooper & Co.*; *The Solicitor to the Clearing Office*.

[Reported by J. H. MUNNERS, Barrister-at-Law.]

Cases of Last Sittings—Summary.

M. Isaacs and Sons Limited v. Cook. Mr. Justice Roche. 24th July.

In this special paper case, arising under Order XXV, Rule 2, Mr. Justice Roche had to consider a defence of "absolute privilege" in proceedings of libel, put forward on behalf of a report made in the course of his official duties by Sir Joseph Cook, the High Commissioner of the Commonwealth of Australia. The case arose out of the following facts:

The defendant made the following report to the Australian Premier:—

> Oranges.—Two Victorian shipments were forwarded to the City for sale by auction. This did not prove to be a wise plan, as, in the first place, very low prices were realized and the fruit was bought by Covent Garden merchants, who in some cases made 100 per cent. on their purchases. Covent Garden is an established market, and buyers have got into the habit of looking to that centre to make their purchases; consequently the fruit sold at the City was almost unheard of and was practically at the mercy of traders, who did not enter into competition with one another, and bought as cheaply as possible.

The defence pleaded, *inter alia*, that:

(6) The words were published to the Prime Minister of Australia in Australia in pursuance of the defendant's duty as High Commissioner for Australia and were, therefore, absolutely privileged.

(7) The words were ordered to be printed by the Senate or House of Representatives and were circulated under the authority of the Parliamentary Papers Act, 1908, and were, therefore, privileged.

(8) The publication was justified in Australia and no action in respect of it would lie in England.

(11) Publication to clerks or typists in the ordinary course of business was privileged.

Mr. Justice ROCHE delivered judgment to the following effect: He was only concerned with the one question, whether the publication was absolutely privileged. The matter could not be regarded as an indivisible whole; there were different publications and different considerations applied to them. First, it was complained that there was a publication in England and Australia to the Prime Minister of Australia. As to that, the defendant was duly appointed under the High Commissioner Act, 1909, and his duties were defined by a minute of 17th January, 1910; so far as concerned the report by the defendant to the Prime Minister of Australia, in his view the defence was made out, and he held that the publication was absolutely privileged. The fact that the report related to commercial matters did not of itself prevent the communication from being a communication on State matters: *Smith* v. *East India Company*, 1841, 1 Ch. 50. Secondly, the plaintiffs complained of the publication to clerks and servants in making the report; as to that, *Edmundson* v. *Birch*, 1907, 1 K.B. 371, showed that consequential publication, arising out of and ancillary to the main publication, was protected, and he held that this publication was absolutely privileged. Thirdly, there was a complaint of publication of the report to the members of the Australian Parliament. That Parliament ordered the publication, and on the authority of *Machado* v. *Fontes*, 1897, 2 Q.B. 231, no action would lie in this country for such publication. Fourthly, there was a complaint of publication in newspapers in Australia and in England. As to publication in Australia, he left the matter open; and the effect of publication in this country would depend on facts which he had not before him, and he therefore left that matter open also. The last question would have to go to trial.

COUNSEL: Plaintiffs, *Sir John Simon*, K.C., and *Lord Erleigh*; Defendants, *Bevan*, K.C., and *Wilfrid Lewis*.

SOLICITORS: *Smith & Hudson*; *Coward, Chance & Co.*

Bartsch v. Yearsley and Others. Ct. of Appeal. 30th July.

In this case the Court of Appeal affirmed the decision of Mr. Justice Eve, noted *ante*, p. 779, made on a motion asking for an interim injunction to restrain the production of the play, "The Czarina," by the defendants at the Lyric Theatre. This injunction was subsequently stayed for a week by the learned judge in order to permit of an appeal and upon the terms that the defendants paid to the plaintiff the sum of £250 on account of royalties. The facts were noted in THE SOLICITORS' JOURNAL, *supra*, and need only be very shortly repeated here. The Court of Appeal, although affirming the injunction, suspended it at request of the appellants to facilitate the re-opening of negotiations between the parties.

The MASTER OF THE ROLLS delivered judgment to the following effect:—The plaintiff was admittedly entitled to the copyright in "The Czarina." In his affidavit he contended that the agreement to produce the play had been effected by Yearsley on his behalf, whereas in fact Yearsley had no authority to represent him, and he had not authorized the agreement, which contained no provision to pay him royalties. The defendants said that the plaintiff had authorized Yearsley, or had at any rate held him out as being authorized. Mr. Justice Eve came to the conclusion on the evidence that Yearsley had exceeded his authority in making the agreement, and granted the injunction, as stated. It appears from the evidence that Mr. Yearsley, for Mr. Bartsch, had arranged with Mr. De Leon that the latter should produce the play for one week at the "Q" Theatre. That agreement was for very limited purposes indeed; it was really for the purpose of preserving the plaintiff's rights. After that there was a dinner, at which Mr. and Mrs. Yearsley, the plaintiff, and Mr. De Leon were present, and the defendants contended that they left after that dinner with the impression that the plaintiff had left his interests in Mr. Yearsley's hands, and that Mr. Yearsley had authority to act for him. But there was no evidence of that. For an agent to have authority to negotiate was not to have authority to sign, and further the agreement here was very wide in its terms. It was clear that Mr. Yearsley had no authority, and he (the Master of the Rolls) could find no evidence of his having been held out as

authorized to act for the plaintiff. The order of Mr. Justice Eve would be affirmed, and the injunction would proceed.

The court consisted of the Master of the Rolls, Warrington and Sargant, L.JJ.

COUNSEL: Appellant, *Gover*, K.C., and *Rivière*, *MacGilliwray*; Respondents, *Clayton*, K.C., and *H. Johnston*.

SOLICITORS: *Cardew, Smith & Ross*; *Indermaur & Brown*; *Strong & Co.*

Smith and Amalgamated Union of Marine Workers, Preston *v.* Cotter. Mr. Justice Eve. 30th July.

In this case, noted *ante*, p. 796, Mr. Justice Eve heard, in accordance with leave to apply given at the hearing, a motion by the plaintiffs, pursuant to the declaration made at the hearing by the learned judge, asking for an order directed to the defendant Cotter, and asking that so long as he officiated as or purported to be President of the Trade Union in question, he should sign all or any cheques presented to him for signature, and already signed by at least one trustee and the treasurer, whenever such cheques are said by the trustees to be drawn in execution of the trusts reposed in them under the rules of the Trade Union. The defendant, while satisfied that he would be protected if he signed cheques in accordance with a judicial order, and therefore not contesting the making of the order, if the judge thought it proper, nevertheless could not consent to it. Mr. Justice EVE made the order and directed that the costs should be costs in the action.

COUNSEL: *Sir Henry Slesser*, K.C., and *Alfred Short*; *Clayton*, K.C., and *Lavington*.

SOLICITORS: *W. H. Thompson*; *Cardew, Smith & Ross*.

Gifford *v.* Gifford and Freeman. Probate, Divorce and Admiralty Division. Lord Merrivale. 30th July.

This case is only noted here because it indicates the circumstances in which the court will treat divorce proceedings as resulting from a collusive arrangement between the parties. The petitioner sought a divorce against his wife, a very wealthy woman, who did not defend the proceedings on the ground of her adultery with the co-respondent. The latter, at an interview between himself and the petitioner, had agreed to pay a certain sum by way of damages in respect of the injury done to the husband, and this arrangement was embodied in a letter between the parties, which was in the following terms:—

> Dear Mr. Gifford,—It is agreed that in order to meet the damage I have done you with regard to my relations with your wife without unnecessarily bringing everything up in the public court, that the figure of such damages shall be £2,500, as to £1,750 down to-day (29th April) and the remainder to an amount £750, to be paid on or before 29th September next. It is agreed that you will not in any way expose your wife's past. It is understood that there is no question of blackmail on your part. The above sum is in respect of damage only. Of course, this is subject to your not claiming any further damages from me and to your putting no obstacles in the way of a decree *nisi* being pronounced absolute.—Yours truly, L. G. FREEMAN.

The facts were fully placed before the court by the petitioner's legal representatives.

The PRESIDENT, refusing a decree, delivered judgment to the following effect:—

I have no doubt as to the course I ought to take in this case. The petitioner is a man who married a very wealthy woman. In 1924 there were cross-petitions, and afterwards an agreement was made under which the parties lived together for a short time. The document then signed shows payment of a considerable sum of money by the wife to the husband. In February, 1925, there was another separation under an agreement, the main provision of which was for payment of £400 a year to the husband. Next month the husband received some information about the co-respondent, who seems also to have been a man who had a great deal of money at his disposal, and he filed a petition claiming dissolution of marriage. After that there was a conversation, and the co-respondent made an arrangement with the petitioner evidenced by the document produced. The co-respondent was to pay £2,500 in order to avoid, as it was said, unnecessarily bringing everything up in the public court, and it was agreed that the petitioner would not in any way expose his wife's past, and, in the petitioner's handwriting, a clause was added to the draft letter, which declared that the payment was subject to the petitioner not claiming any further damages from the co-respondent and putting no obstacle in the way of the decree *nisi* being made absolute. The whole transaction savours of corruption and the final clause is a collusive agreement with regard to this suit. The petition is dismissed. I need only add that the petitioner's solicitors were put in an almost impossible position by the conduct of their client, and no reflection at all can be made on the mode in which they have discharged their duty when the facts became known to them.

***In re* Wilson, *Ex parte* F. S. Salaman. Mr. Justice P. O. Lawrence. 31st July.**

In this important case which concerned the position of parties dealing commercially with a bankrupt where the Official Receiver knows of the dealings and does not either expressly disapprove or interfere, Mr. Justice LAWRENCE held that Major Wilson's trustee in bankruptcy could not claim from ticket agencies and others moneys which they had paid to Major Wilson for blocks of tickets for seats at the Stadium, Wembley, for the fight held there between Gibbons and Bloomfield, though at the time a receiving order had been made against Major Wilson, as the Official Receiver, who at the time was interim trustee in the bankruptcy, had allowed the arrangements for the fight to proceed.

The trustee in the bankruptcy of Major James Arnold Wilson, the promoter of boxing contests, claimed from the respondents, Messrs. Keith Prowse & Co. Limited, the box office and theatre ticket agents, a sum of £1,855 1s. 4d. which they had paid in August, 1924, to the bankrupt for blocks of seats at the Stadium, Wembley, to view the fight to be held there on 9th August, 1924, between Gibbons and Bloomfield. A receiving order was made against Major Wilson on 26th June, 1924, which was not gazetted until 29th July, 1924, and the trustee in bankruptcy claimed that the bankrupt's property then vested in the Official Receiver, with the result that the £1,855 1s. 4d. ought to have been paid by the respondents to him. There were several similar motions before the court in respect of sums paid to the bankrupt with regard to the Stadium fight by the British Empire Exhibition, the Fleetway Press, Limited, the District Messenger and Theatre Ticket Company, Limited, and other firms and companies. The respondents alleged that the Assistant Official Receiver knew of the fight at the Stadium and said he would not interfere with it, but that sums paid to Major Wilson's account must not be used for his private purposes.

Mr. Justice LAWRENCE said that he was of opinion that trustee's claim failed and ought to be dismissed with costs. The trustee would take his costs and also the costs ordered to be paid to the respondents out of the estate.

COUNSEL: *Edward Clayton*, K.C., and *Harold Simmons* appeared for the Official Receiver; *F. K. Archer*, K.C., and *F. G. Paterson* for the respondents, Messrs. Keith Prowse & Co.; *F. K. Archer*, K.C., *H. J. Wallington*, *C. Tindale Davis*, and *E. W. Hansell* for respondents on the other motions.

SOLICITORS: *Woolfe & Woolfe* for the Official Receiver; *Golding, Hargrove & Golding*; *Wallington, Fabian & Co.*; *H. H. Wells & Sons*; *Slaughter & May*; *Alfred Bright & Sons* and *Joynson-Hicks & Co.* for the respective respondents.

Short v. Borough of Poole. Mr. Justice Romer. 31st July.

In this case Mr. Justice ROMER found in favour of a claim by a certificated woman teacher, recently married, for a declaration that a notice served on her by or on behalf of the defendant local education authority, purporting to terminate her engagement as an assistant teacher, on the ground of her marriage, was invalid and inoperative, and for an injunction to restrain the defendants from attempting to enforce the notice. The facts are sufficiently indicated in the summarized note of Mr. Justice ROMER'S judgment which follows here.

After stating the facts and stating that he followed Mr. Justice Eve's statement of the law as enunciated in *Price* v. *Rhondda U.D.C.*, 1923, 2 Ch., 372, Mr. Justice ROMER delivered judgment to the following effect:—

I proceed, therefore, to examine the facts of this case to ascertain whether the plaintiff has shown that the defendants have not acted in good faith with the intent to keep their schools efficient, but for some other alien or irrelevant purpose. The only parol evidence in the case was that given by the plaintiff herself. No member or officer of the defendant authority was called on their behalf. In endeavouring, therefore, to ascertain whether the defendants in terminating the plaintiff's engagement were or were not acting for some "alien or irrelevant purpose" I have to rely almost entirely upon the documentary evidence in the case and the inferences that ought properly to be drawn from it. Now it is admitted that during the whole period of the plaintiff's employment by the defendants she has performed her duties satisfactorily and that no complaints or adverse reports have been made with respect to her efficiency as a teacher. The only reason for her dismissal is that she is a married woman. She was, in fact, married on 6th August, 1921. Down to this time the defendants do not seem to have given any indication of their having an objection to the employment of married women teachers.

At a meeting held on the 28th of that month the education committee adopted the report of a sub-committee that had been appointed to consider the cases of certain classes of married women teachers. This report, so far as material, is in these terms: "Your committee beg to report that there are, at present, 22 married women teachers employed in the public elementary schools of the borough, of whom 11 are employed in council schools and 11 in non-provided schools. After giving the matter careful consideration your committee are of opinion that, as a general rule, the retention of married women teachers in the public elementary schools is inadvisable and they recommend that notice be given to all such married women teachers as are employed in council schools that their engagement will be terminated in accordance with the terms of their engagement, unless they can satisfy the committee that some sufficient reason exists for the engagement being continued, and that unless such satisfactory reason is given their engagement will be terminated at the end of three months, and that the managers of the non-provided schools be recommended to take similar action." The action of the education committee as to this report was adopted by the council on 6th May, 1924. There is nothing in the report or the minutes of the two meetings that clearly indicates the reasons that were actuating the education committee or the Council. But it will be observed that the managers of the non-provided schools were to be recommended to take similar action. Seeing that under s. 29 (2) of the Education Act, 1921, the council were entitled to direct the managers to dismiss a teacher on educational grounds, and had power themselves to carry out any such direction if the managers disregarded it, this reference to the managers is somewhat ominous.

As already stated, I have not had the advantage of hearing from any member or official of the education authority what were the motives actuating the committee and the council in taking the action that they did. That being so, I must do the best I can with the materials at my disposal. Doing so and not forgetting that the onus of proof is on the plaintiff, I find myself driven to the conclusion that, however deserving of sympathy the object that the defendants have in view may be, they are attempting to dismiss the plaintiff in pursuance of motives in no way connected with the efficient maintenance of the schools or of education in their district, but for motives alien and irrelevant to the discharge of their statutory duties. I must make the declaration that is asked for.

COUNSEL: Plaintiff, *Clauson*, K.C., and *A. A. Thomas*; Defendants, *Maugham, K.C.*, and *Myles*; A third party interested, *Bethune*.

SOLICITORS: *Eric G. Floyd*; *Peacock* and *Goddard*; *Wilson* and *Blew*.

In re Margaret Louise Thain, an Infant. Div. Court. 29th July.

In this remarkable case, which does not seem to have attracted the public or professional attention it deserves, the Divisional Court quashed an order of Mr. Justice Talbot directing the issue of a writ of *Habeas Corpus* ordering the restoration to the father of a female child, six years old, which since the death of its mother, when it was a few months old, had resided with its aunt. The facts, fortunately, were admitted, so that only the propriety of the order was in question. The father was admittedly a most respectable man, perfectly fitted to have the custody of his child, and he had in fact made payments for its maintenance. He had left the child with its maternal aunt merely because, on the death of its mother, it was difficult for him to take direct charge of it. Now, having married again, and having a home for the child, he was anxious to have it under his own charge. The only ground for supposing such an arrangement inimical to the welfare of the child is that a child of six would feel it a wrench to leave the home it had all along known—still, as counsel pointed out, a wrench which occurs whenever a child is sent to a boarding school. Mr. Justice Talbot, in those circumstances, had made an order in favour of restoring the child, but this—for the reason just given—the Divisional Court quashed; but intimated that at a future date the Court of Chancery might be asked to consider the position and should then deal with the matter as open.

COUNSEL: Appellant, *Hawke*, K.C., and *Robertson*; Respondent, *Farleigh*.

SOLICITORS: *Sharpe, Pritchard & Co.*; *G. & W. Webber*.

Correspondence.

County Courts and Speedy Justice.

Sir,—It would be unfortunate if the letter signed "W.H.J." in your issue of 15th August, 1925, created the impression that his experience of a Metropolitan County Court was typical of the state of affairs throughout the Provincial County Courts.

In this court, summonses entered on the 18th July, which could be entered for hearing in a Registrars' Court, were made returnable on the 3rd September, and where either of the parties desired to have the action tried by the judge the action was adjourned to the 8th September, being the first day on which the judge sits after the vacation. The return day for other summonses entered on the 18th July, was the 9th September.

For ordinary summonses entered on the 20th August the return day is the 29th September, for possession cases 25th September, and for defended default summonses the 9th September.

ARTHUR L. LOWE,
Registrar Birmingham County Court.

New Rules.

SUPREME COURT, ENGLAND. PROCEDURE.

THE RULES OF THE SUPREME COURT (PATENTS AND DESIGNS), 1925, DATED 22ND JNNE, 1225.

(*Continued from p.* 798.)

"9. Any person presenting a petition for the revocation of a patent under section 25 of the principal Act must deliver with his petition particulars of the objections to the validity of the patent on which he means to rely and no evidence shall, except by leave of the Court, be admitted in proof of any objection of which particulars are not so delivered.

"10. The respondent to the petition for the revocation of a patent under section 25 of the principal Act shall be entitled to begin and give evidence in support of the patent and if the petitioner gives evidence impeaching the validity of the patent the respondent shall be entitled to reply.

"11. In an action for infringement of a patent the plaintiff must deliver with his statement of claim particulars of the breaches relied upon.

"12. In an action for infringement of a patent the defendant if he disputes the validity of the patent must deliver with his defence, particulars of the objections on which he relies in support of such invalidity.

"13. A defendant in an action for infringement of a patent who under section 32 of the principal Act counterclaims in the action for the revocation of the patent shall with his counterclaim deliver particulars of any objection to the validity of the patent on which he relies in support of his counterclaim.

"14. Particulars of breaches shall specify which of the claims in the specification of the patent sued upon are alleged to be infringed and shall give at least one instance of each type of infringement of which complaint is made.

"15. Particulars of objections (whether delivered with the defence in an action for infringement of a patent or with a petition for revocation under section 25 of the principal Act or with a counterclaim for revocation under section 32 of the principal Act) must state every ground upon which the validity of the patent is disputed and must give such particulars as will clearly define every issue which it is intended to raise.

"16. If one of the objections taken in the particulars of objections be want of novelty the particulars must state the time and place of the previous publication or user alleged, and if it be alleged that the invention has been used prior to the date of the patent must also specify the names of the persons or person who are alleged to have made such prior user and whether such prior user is alleged to have continued down to the date of the patent, and if not, the earliest and latest dates on which such prior user is alleged to have taken place, and shall also contain a description (accompanied by drawings if necessary) sufficient to identify such alleged prior user, and if such user relates to any machinery or apparatus shall specify whether the same is in existence and where the same can be inspected'

"No evidence at variance with any statement contained in the particulars shall be given in support of any objection, and no evidence as to any machinery or apparatus which is alleged to have been used prior to the date of the patent and which is in existence at the date of the delivery of the particulars shall be receivable unless it be proved that the party relying on such prior user has, if such machinery or apparatus be in his own possession, offered inspection of the same, or if not in his own possession, has used his best endeavours to obtain inspection of the same for the other parties to the proceedings.

"17. Particulars of breaches and particulars of objection may from time to time be amended by leave of the Court upon such terms as may be just.

"18. Further and better particulars of breaches or particulars of objections may at any time be ordered by the Court.

"19. At the hearing of any action, petition or counterclaim relating to a patent no evidence shall, except by leave of the Court (to be given upon such terms as to the Court may seem just), be admitted in proof of any alleged infringement or objection not raised in the particulars of breaches or objections respectively.

"20. On taxation of costs in any action or counterclaim for infringement of a patent or in any petition for revocation of a patent under section 25 of the principal Act or in any counterclaim for revocation of a patent under section 32 of the principal Act the following provision shall apply, that is to say:—

If the action petition or counterclaim proceeds to trial on any patent no costs shall be allowed in respect of any issues raised in the particulars of breaches or particulars of objections and relating to that patent to the parties delivering the same respectively except in so far as such particulars are certified by the Court to have been proven or to have been reasonable and proper without regard to the general costs of the case but subject as aforesaid the costs of the issues raised by the particulars of breaches and the particulars of objections shall be in the discretion of the Taxing Master.

"21. Where an application is made by a patentee for leave to amend his specification by way of disclaimer under section 22 of the principal Act, the following provisions shall apply:—

(*a*) The application shall be made by motion in the proceedings pending before the Court and notice of such motion together with a copy of the specification certified by the Comptroller showing in red ink the amendment proposed to be made shall be served on the parties to such proceedings and in the first instance upon such parties only.

(*b*) On the hearing of such motion the Court shall decide whether and on what terms as to costs or otherwise the application shall be allowed to proceed and if the application be allowed to proceed shall give directions as to whether such application shall be heard on oral or affidavit evidence and if on affidavit evidence shall fix the times within which affidavits shall be filed by the parties respectively and by any other person entitled to be heard under the principal Act or these Rules.

(*c*) If the application be allowed to proceed the applicant shall forthwith serve the Comptroller with a copy of the notice of motion together with such copy specification as aforesaid and also an office copy of the order allowing the application to proceed, and also with the name and address of the applicant's solicitor and the proposed amendment shall be advertised in the Illustrated Official Journal (Patents), such advertisement stating that any person desiring to oppose the amendment must within fourteen days of the issue of the advertisement give notice in writing of such desire to the applicant's solicitor, whose name and address for that purpose shall be also stated in the advertisement. Any person giving such notice shall be entitled to be heard upon the hearing of the motion.

(*d*) Within seven days after the receipt of any such notice the applicant shall, if the person giving such notice shall have stated therein an address for service within the United Kingdom, serve on such person a copy of the notice of motion together with such copy of the specification as aforesaid and also a copy of the order allowing the application to proceed. Such service may be made by prepaid registered letter sent to such person through the post at his address for service.

(*e*) In the case of an application directed to be heard on oral evidence the applicant shall as soon as he shall have complied with the requirements of the preceding Rules set the same down for hearing in the witness list and in the case of an application directed to be heard on affidavit evidence the applicant shall after such compliance as aforesaid and after the times fixed for filing evidence have expired set the same down for hearing in the non-witness list and the application so set down shall be heard and disposed of in due course.

(*f*) Where the Court allows a specification to be amended the applicant shall forthwith lodge with the Comptroller an office copy of the order allowing such amendment, and the Comptroller shall advertise the same once at least in the Illustrated Official Journal (Patents). The applicant shall also if required so to do by the Court or by the Comptroller leave at the Patent Office a new specification and drawings as amended, the same being prepared as far as may be in accordance with the Rules of the Patent Office for the time being in force.

"22. All references of disputes to the Court under section 29 of the principal Act are hereby assigned to the Chancery Division and shall be commenced by originating notice of motion to which the provisions of Order V Rule 9 (*c*), shall apply. Where the application is by a patentee or by a proprietor of a registered design the notice of motion shall be addressed to the Government Department or Departments concerned and shall be served on the Treasury Solicitor. Where the application is by a Government Department it shall be served on the patentee or on the proprietor of the registered design as the case may be and may be made through the Treasury Solicitor or through the Solicitor of the Department and in the latter case shall

be forthwith notified to the Treasury Solicitor unless the Judge shall give special leave to the contrary. There shall be at least ten clear days between the service of a notice of motion under this Rule and the day named in the notice for hearing the motion."

2. These Rules may be cited as the Rules of the Supreme Court (Patents and Designs), 1925, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

3. The Provisional Rules of the Supreme Court (Patents and Designs), 1924, which came into operation on the 12th day of October, 1924, shall continue in force till the 1st day of October, 1925, on which day the said Rules shall be superseded and replaced by these Rules.

Dated the 22nd day of June, 1925.

Cave, C., etc.

SUPREME COURT, ENGLAND.
PROCEDURE.

THE NATIONAL HEALTH INSURANCE (PROCEDURE ON APPEAL) RULES, 1925, DATED 15TH JULY, 1925, MADE BY THE RULE COMMITTEE OF THE SUPREME COURT FOR REGULATING APPEALS AND REFERENCES TO THE HIGH COURT UNDER THE NATIONAL HEALTH INSURANCE ACT, 1924, 14 & 15 GEO. 5, C. 38.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

ORDER LV, B.

1. Rules 1-11, both inclusive, of Order LV, B and the title thereto are hereby repealed and the following rules and title shall stand in lieu thereof :—

"NATIONAL HEALTH INSURANCE ACT, 1924.

1. An appeal under section 89 of the National Health Insurance Act, 1924, from a decision of the Minister of Health shall be instituted in the King's Bench Division of the High Court of Justice by originating notice of motion.

2. Any person who is aggrieved by, and is desirous of appealing against, a decision of the Minister of Health may, within 21 days from the date of the decision, or within such further time as the Minister may allow, by notice in writing addressed to the Minister, stating the grounds of his appeal, require the Minister to state a case setting forth the facts on which his decision was based, and his decision thereon, and the Minister shall, as soon as may be, state the case and send it by registered post to the person aggrieved. A case stated by the Minister shall be signed by him or by such person as he may authorise in that behalf.

3. An originating notice of motion shall be filed in the Crown Office at the Royal Courts of Justice within 21 days of the despatch of the case, or within such further time as the Court may allow, and the notice of motion shall at least twenty-one days before the time fixed by the notice for making the motion be served upon the Minister and, together with a copy of the case, upon every party to, or person served with notice of, the proceedings before the Minister. The notice of motion shall be in the form No. 18B set out in Part II of Appendix B, and shall state the grounds of the appeal. The case shall be entered in a list to be kept at the Crown Office for that purpose.

4. Proceedings on a reference of a question under proviso (iii) to section 89 (1) of the National Health Insurance Act, 1924, by the Minister of Health to the High Court for decision shall be instituted in the King's Bench Division by originating notice of motion in the form No. 18C set out in Part II of Appendix B. The notice of motion shall be filed in the Crown Office at the Royal Courts of Justice and shall be entered in the list referred to in the last paragraph.

5. The Minister shall state the question referred by him to the Court, together with the facts relating thereto in a case stated and signed in the same manner as on an appeal.

6. The Minister shall serve the notice of motion, together with a copy of the case, upon the person or one of the persons as between whom and the Minister the question has arisen, at least 21 days before the time fixed by the notice for making the motion.

7. Upon the hearing of an appeal or reference the Court shall have power if it thinks fit to amend the case or to order the case to be sent back to the Minister for amendment or to receive further evidence.

8. The Court in all cases of appeals or references shall have power to draw inferences of fact from the facts set forth in the case, and shall determine all questions arising thereon, and in all cases of appeals shall have power to reverse, affirm, or amend the decision appealed against or to make such other order as it may think fit, including any order as to costs.

9. The decision of the Court on an appeal or a reference shall be embodied in a certificate to be signed by the Judge at the hearing and the original thereof shall be filed in the Crown Office and a copy thereof sent by the Crown Office to the Minister of Health, and to the parties appearing at the hearing of the appeal or reference respectively.

10. The ordinary practice and rules of the King's Bench Division shall in so far as the same are applicable and are not inconsistent with this Part of this Order apply to proceedings under this Part of this Order.

11. Nothing in this Part of this Order shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative."

2. In Part II of Appendix B to the Rules of the Supreme Court, 1883, the forms numbered 18B and 18C respectively shall be annulled, and the forms set out in the Appendix to these Rules and numbered 18B and 18C respectively shall be substituted therefor.

3. In the title under Order LV, B the words "I. NATIONAL HEALTH INSURANCE ACT, 1924" shall be substituted for the words "I. NATIONAL HEALTH INSURANCE ACT, 1911 to 1920."

4. These Rules may be cited as the National Health Insurance (Procedure on Appeal) Rules, 1925, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

5. The National Health Insurance (Procedure on Appeal) Provisional Rules, 1924, which came into force on the 1st day of January, 1925, as Provisional Rules, shall continue in force till the 1st day of October, 1925, on which day they shall be superseded and replaced by these Rules.

Dated the 15th day of July, 1925.

Cave, C., etc.

APPENDIX.

No. 18B.

NOTICE OF MOTION ON APPEAL UNDER SECTION 89 OF THE NATIONAL HEALTH INSURANCE ACT, 1924.

In the High Court of Justice.
King's Bench Division.
In the matter of the National Health Insurance Act, 1924,
and
In the matter of an appeal against a decision of the Minister of Health on a question as to the employment, etc. (*or as the case may be*).

TAKE NOTICE that the High Court of Justice, King's Bench Division, at the Royal Courts of Justice, Strand, London, will be moved at the expiration of 21 days from the service upon you of this notice or so soon thereafter as Counsel can be heard by Counsel on behalf of that the decision of the Minister of Health on a question as to whether of is or was employed within the meaning of the National Health Insurance Act, 1924 (*or as the case may be*), as set forth in the case stated by the Minister of Health, dated the day of , 19 a copy of which accompanies this notice, be reversed [*or* amended, *as the case may be*] on the ground that such decision was wrong in law for that (*here state the question of law*) and that it may be adjudged that (*here state relief claimed.*)

Dated the day of , 19 .

Solicitor for the said

To of , etc.

No. 18C.

NOTICE OF MOTION ON REFERENCES UNDER SECTION 89 OF THE NATIONAL HEALTH INSURANCE ACT, 1924.

In the High Court of Justice.
King's Bench Division.
In the matter of the National Health Insurance Act, 1924,
and
In the matter of a reference by the Minister of Health as to the employment of

TAKE NOTICE that the High Court of Justice, King's Bench Division, at the Royal Courts of Justice, Strand, London, will be moved at the expiration of 21 days from the service upon you of this notice or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Minister of Health for the decision of the Court as to whether the class of employment specified hereunder is or is not or will not be employment within the meaning of the National Health Insurance Act, 1924, or that such other order may be made in the premises as the Court may think fit.

The class of employment to which this notice refers is employment (*state the class as clearly and succinctly as may be*) the facts in relation to which class of employment are set forth in a case stated by the Minister of Health and dated the day of , a copy whereof accompanies this notice.

Dated the day of , 19 .

Solicitor to the Minister of Health.

To of , etc.

Law Societies.

To Secretaries—Reports of meetings, lectures, etc., to ensure insertion in the current number, should reach the office *not later* than 4 p.m. Wednesday.

SOLICITORS' MANAGING CLERKS' ASSOCIATION.

Classes for Law Clerks.

Encouraged by the success which has attended the classes for law clerks since their foundation by the Solicitors' Managing Clerks' Association in 1920, the Council has arranged a further series for the forthcoming winter. As before, the classes will be held at the Royal Courts of Justice. Hitherto there have been four courses, two during Michaelmas sittings and two during Hilary; but, as the Association has arranged for a course of lectures by Mr. A. F. Topham, K.C., on the Law of Property Acts, on Wednesday evenings during Michaelmas sittings, the Wednesday class will be suspended during that term. The syllabus is as follows: Course A, Practice in the High Court, each Monday at 6.45 p.m., commencing the 12th October and ending the 14th December. Lecturer, Mr. R. W. Everard. Course B, Estate and other Death Duties, each Monday at 6.45 p.m., commencing the 11th January, 1926, and ending the 15th March. Lecturer, Mr. A. W. Jennings. Course C, Practical Conveyancing, each Wednesday at 6.45 p.m., commencing the 13th January, 1926, and ending the 17th March. Lecturer, Mr. W. A. Ling. Examinations will be held at the end of the session on the subjects dealt with at each of the classes, and prizes will be awarded. Any student attending the classes may sit for the examinations, but managing clerks and articled clerks will not be eligible for a prize. The fee for any one course is 3s., and for the full series, 5s.; full information may be obtained from Mr. G. Tindall, Hon. Secretary, at the offices of the Association, 7, New-court, Lincoln's Inn, W.C.2.

Law Students' Journal.

The Law Society's School of Law.

SESSION 1925–26.

No text-books are prescribed by the Council for the Final (Pass) Examination (with one exception); but the syllabus issued to students of the School in connection with each course of lectures contains detailed advice on reading, and a list of authorities to be consulted. The composition fee for the whole course taken in consecutive terms is £21.

Final (Honours).

This course is intended for those students who have already taken, or are in the process of taking, the Final (Pass) course, and have attained a satisfactory standard in the subjects set for the Honours classes. Students who are unable to spend three years in their preparation for the Final may with advantage take one or more of the Honours subjects in their second year concurrently with the Final (Pass) course.

Classes will be held in the following subjects:—

Autumn Term, 1925.—Common Law (Tort); Private International Law.

Spring Term, 1926.—Common Law (Contract); Conveyancing.

Summer Term, 1926.—Criminal Law; Equity.

No text-books are prescribed by the Council for the Final (Honours) Examination. The fee for each class is £3 3s. But a holder of a certificate of distinction in a subject of the Final (Pass) course will be allowed to take the Honours class in the same subject without payment of a further fee (for certificates of distinction, see p. 6). The inclusive composition fee for the Final (Pass and Honours) courses is £26 5s.

LAW SCHOOL: FINAL COURSE.

The course suggested for Final students entering in the Session, 1925-26, is as follows:—

	For Students entering in Autumn Term, 1925.	For Students entering in Spring Term, 1926.	For Students entering in Summer Term, 1926.
First Term ..	Company Law and Bankruptcy. Sale of Goods and Bills of Sale.	Private International Law, Criminal Law and Divorce. Insurance and Negotiable Instruments.	Real and Personal Property. Landlord and Tenant.
Second Term ..	Private International Law, Criminal Law and Divorce. Insurance and Negotiable Instruments.	Real and Personal Property. Landlord and Tenant.	Conveyancing and Probate. Bailments, including the Law of Carriage.
Third Term ..	Real and Personal Property. Landlord and Tenant.	Conveyancing, and Probate. Bailments, including the Law of Carriage.	Private International Law, Criminal Law and Divorce. Procedure in K. B. D.
Fourth Term ..	Conveyancing and Probate. Bailments, including the Law of Carriage.	Equity and Procedure in the Ch. Division. Procedure in K. B. D.	Common Law (Contract and Tort). Employment, including Agency.
Fifth Term. ..	Equity and Procedure in the Ch. Division. Procedure in K. B. D.	Common Law (Contract and Tort). Employment, including Agency.	Company Law and Bankruptcy. Sale of Goods and Bills of Sale.
Sixth Term ..	Common Law (Contract and Tort). Employment, including Agency.	Company Law and Bankruptcy. Sale of Goods and Bills of Sale.	Equity and Procedure in the Ch. Division. Insurance and Negotiable Instruments.

Legal News.

Appointments.

[Notices intended for insertion in the current issue should reach us on Thursday morning.]

The King has approved the appointment of Sir WILLIAM FRANCIS KYFFIN TAYLOR, K.B.E., K.C., to be a Commissioner of Assize on the Midland Circuit.

Mr. REGINALD DODSON, Solicitor to the Metropolitan Borough of Battersea, has been appointed Assistant Solicitor in the service of the Nottinghamshire County Council.

Wills and Bequests.

Mr. Albert Vincent Knight, solicitor, of Talbot-court, E.C., left estate of the gross value of £7,500.

Mr. Edward Maurice Fitzgerald Boyle, of Gorteen, Limavady, Londonderry, solicitor, who died on 1st May, aged fifty-one, left personal estate in Northern Ireland and Great Britain valued at £14,858.

Mr. William Mellows (eighty-three), solicitor, of Priestgate, Peterborough, left estate of the gross value of £27,540.

Mr. John Beaumont Hotham, of Milne Graden, Coldstream, Berwickshire, Clerk of the Senate and Assistant Clerk of the Parliament of Northern Ireland, and before that for many years Clerk in the House of Lords, who died on 30th December, aged fifty, domiciled in Scotland, left, in addition to real estate, unsettled personal estate valued for probate at £28,361.

Alderman John Reginald Symonds, solicitor (seventy-four), of Okeleigh and of Bridge-street, Hereford, clerk to the county council and three times Mayor of Hereford, left estate of the gross value of £32,828.

Obituary.

[Notices intended for insertion in the current issue should reach us on Thursday morning.]

The Hon. Mr. GEORGE GRAY.

A distinguished American lawyer has passed away in the person of The Hon. Mr. George Gray. Born at Newcastle, Delaware, in 1840, he was "admitted" to the Bar in 1863, and in 1875 became Attorney-General, an appointment which he held with great distinction for ten years. From 1899 to 1914 he was a Circuit judge. He was made a member of The Court of Arbitration under the Hague Convention and acted on Tribunals dealing with the settlement of such important questions as the North Atlantic Fisheries and other similar issues between Canada and the United States. He also held the position of Regent and Chairman of the Executive Committee of the Smithsonian Institution.

Mr. G. W. EDWARDS.

Having practised in Liverpool for upwards of forty years and in recent years also at Southport, Mr. George William Edwards has just died. He was a member of the Law Society and of the Liverpool Reform Club, was admitted in 1887, and was a Commissioner for the Canadian Provinces and British Colonies.

Mr. D. SHAW.

Mr. David Shaw, solicitor, of Sunderland, died there suddenly on the 15th inst. at the age of sixty-five. Mr. Shaw had been a member of the firm of Messrs. McKenzie, Kidson and Shaw, of 66, John-street, since 1914, having been admitted ten years previously. He was a well-known man in Sunderland.

Mr. T. DENNIS.

Mr. Thomas Dennis, solicitor, of Hull, died there recently at the age of eighty-seven. He had been in the life-long employ of one firm of solicitors, viz., Messrs. Holden, Sons and Hodgson, his total service extending over a period of seventy years.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement. Thursday, 10th September, 1925.

	Middle Price. 26th Aug.	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 2½%	56½	4 8 0	—
War Loan 5% 1929-47	101$\frac{11}{16}$	4 18 6	4 16 6
War Loan 4½% 1925-45	96½	4 13 6	4 18 0
War Loan 4% (Tax free) 1929-42	101½	3 18 6	4 0 0
War Loan 3½% 1st March 1928	96½	3 12 6	5 1 0
Funding 4% Loan 1960-90	89½	4 9 6	4 10 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	90½xd	4 8 0	4 11 0
Conversion 4½% Loan 1940-44	96$\frac{13}{16}$	4 13 0	4 16 6
Conversion 3½% Loan 1961	76½xd	4 11 6	—
Local Loan 3% Stock 1921 or after	66½	4 11 0	—
Bank Stock	254	4 13 6	—
India 4½% 1950-55	90½	4 19 6	5 4 0
India 3½%	68½	5 3 0	—
India 3%	58½	5 2 0	—
Sudan 4½% 1939-73	95½	4 14 0	4 17 6
Sudan 4% 1974	88½	4 10 6	4 16 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years)	80½	3 14 6	4 10 6
Colonial Securities.			
Canada 3% 1938	81½	3 14 0	4 19 6
Cape of Good Hope 4% 1916-36	92½	4 6 6	5 0 6
Cape of Good Hope 3½% 1929-49	79½	4 8 0	5 0 0
Commonwealth of Australia 4½% 1940-60	98½	4 16 6	4 18 0
Jamaica 4½% 1941-71	93½	4 16 0	4 17 0
Natal 4% 1937	92½	4 6 0	4 17 0
New South Wales 4½% 1935-45	93½	4 16 6	5 1 6
New South Wales 4% 1942-62	83½	4 16 0	5 0 0
New Zealand 4½% 1944	95½	4 15 0	4 19 0
New Zealand 4% 1929	97	4 2 6	5 1 0
Queensland 3½% 1945	77½	4 10 6	5 8 0
South Africa 4% 1943-63	86½xd	4 12 0	4 16 0
S. Australia 3½% 1926-36	85	4 2 6	5 7 6
Tasmania 3½% 1920-40	83½xd	4 4 0	5 2 0
Victoria 4% 1940-60	85½	4 13 6	4 18 0
W. Australia 4½% 1935-65	92½	4 17 0	4 19 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	64½	4 13 6	—
Bristol 3½% 1925-65	75½	4 13 0	5 0 0
Cardiff 3½% 1935	88	3 19 6	5 0 6
Croydon 3% 1940-60	68½	4 8 6	5 0 0
Glasgow 2½% 1925-40	77	3 5 0	4 11 6
Hull 3½% 1925-55	77	4 11 0	4 19 0
Liverpool 3½% on or after 1942 at option of Corpn.	75½	4 13 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4 12 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 6	—
Manchester 3% on or after 1941	63½	4 14 0	—
Metropolitan Water Board 3% 'A' 1963-2003	64	4 14 0	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	65½	4 12 0	4 13 6
Middlesex C.C. 3½% 1927-47	80½	4 7 6	5 0 0
Newcastle 3½% irredeemable	73½	4 15 0	—
Nottingham 3% irredeemable	63½	4 14 6	—
Plymouth 3% 1920-60	69½	4 6 6	4 18 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82½	4 17 0	—
Gt. Western Rly. 5% Rent Charge	99½	5 0 6	—
Gt. Western Rly. 5% Preference	94½xd	5 5 6	—
L. North Eastern Rly. 4% Debenture	80½	4 19 6	—
L. North Eastern Rly. 4% Guaranteed	77½xd	5 3 6	—
L. North Eastern Rly. 4% 1st Preference	70½xd	5 13 6	—
L. Mid. & Scot. Rly. 4% Debenture	82½	4 17 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	79½xd	5 0 6	—
L. Mid. & Scot. Rly. 4% Preference	73½xd	5 9 0	—
Southern Railway 4% Debenture	82½	4 17 0	—
Southern Railway 5% Guaranteed	99½xd	5 2 0	—
Southern Railway 5% Preference	91½xd	5 9 0	—